

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8584 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NEHA HARSHADBHAI VAKIL THROUGH HARSHADBHAI B MASTER

Versus

COMMISSIONER OF HIGHER EDUCATION

Appearance:

MR SAKEEL A QURESHI for Petitioner

MR SAMEER DAVE for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. In the year 1993, the petitioner passed S.S.C. examination of the Gujarat Secondary Education Board and secured 71% marks. The petitioner applied for admission in Fine Arts faculty, but as the petitioner was lacking 15 days in completing the age of 15 years, she was not given admission in the said course. The petitioner continued further studies in Standard 11th and 12th. The

petitioner obtained 83% marks in the subject of Drawing and she applied for admission in the Fine Arts course of five years. The application filed by the petitioner for admission to the five years course in Fine Arts was rejected by respondent on 12th September 1995. No reasons have been assigned for rejection of the application of petitioner nor any opportunity of hearing has been afforded to the petitioner before doing so. Hence the petitioner has approached this Court by filing this Special Civil Application.

2. On 24th November 1995, Rule was issued and interim relief has been granted by this Court. Under the interim relief, it has been ordered to consider petitioner's case in General Category and it was further ordered that if she was entitled to admission on merits she should be given admission. From the order which has been made by this Court on 24th November 1995, it transpires that admission was not given to the petitioner on the ground that she has not produced caste certificate alongwith her admission form though in the application-form, she stated herself to be Socially and Educationally Backward Class (S.E.B.C.) candidate. It was taken to be a case where the petitioner was claiming benefit of reservation and in absence of such certificate, that application of the petitioner was rejected. Now it is not in dispute between the parties that on the basis of high percentage marks, which the petitioner secured in the S.S.C. examination, she has been given admission to the said course in General Category. Both the counsel for the parties do not dispute that in General Category, cut off marks on merits was only of 45.5% whereas the petitioner has obtained 71% marks. The petitioner has already completed her studies of the first year of five years degree course of Fine Arts and she has appeared in the examination also, but her result has not been declared. The petitioner filed Civil Application No.8102 of 1996 which is also on Board today in which prayer has been made that the respondents may be directed to declare the result of the first year Fine Arts (Foundation) course. Instead of passing the order on Civil Application, I consider it to be appropriate to take up this Special Civil Application for final hearing.

3. The petitioner, though, in the application form for the five years course of Fine Arts, has stated herself to be a candidate of S.E.B.C. and a certificate has not been produced by her, but rejection of application only for non production of that certificate is highly arbitrary and unjustified. In the matter of

admission of the candidates to different courses, the approach should have been to see that meritorious candidates are being admitted. It may be a case where the respondent would have been misled by mentioning of the fact in the application by the petitioner that she belongs to S.E.B.C. category, but this Court cannot ignore the basic fact that otherwise, the petitioner was sufficiently meritorious candidate and in General Category, candidates of much lower marks have been given admission. In such case, instead of rejecting the application of the petitioner on the ground of non filing of certificate of S.E.B.C., the respondent should have considered the matter objectively and in case it would have taken care, then certainly the application would not have been rejected in view of the fact that the cut off percentage of marks for admission to the aforesaid course in General Category was much less than 71%. How a meritorious candidate has been dealt with in the present case is really shocking. Be that as it may. This Court has protected the petitioner against the aforesaid action of the respondent by grant of interim relief, otherwise one academic year of a meritorious candidate would have been spoilt or lost. The respondent, in case would have taken care to see the marks secured by the petitioner in S.S.C. examination, she would not have been compelled to approach this Court by filing this Special Civil Application. The order of rejecting of the application of petitioner for her admission to five years course of Fine Arts under the communication dated 12th September 1995 is highly arbitrary and unjustified and it cannot be allowed to stand. Accordingly this Special Civil Application succeeds and the same is allowed and the order annexure 'A' of the respondent is quashed and set aside. In view of the fact that the order annexure 'A' dated 12th September 1995 is set aside and the petitioner has been given admission to the course under the interim order of this Court and she has appeared in the final examination of First Year of the said course, I fail to see any justification in the action of the respondent not to declare her result. Interim relief is very clear and this Court has not given liberty to the respondent not to declare result of the petitioner of the examination in which she has to appear of completion of academic session. This approach of the respondent not to declare the result of the petitioner under the pretext of pendency of Special Civil Application before this Court is difficult to appreciate, what to say to except it. The petitioner has to approach this Court again by filing Civil Application. Though I considered, at one point of time, to impose exemplary cost in the present case, but the counsel for the petitioner very fairly submitted that

the petitioner is a daughter of a practicing advocate and he has not charged any fees from her. However, he stated that the petitioner's father has incurred expenses in filing of this Special Civil Application as well as for coming to Ahmedabad from Bharuch. However, the learned counsel for the petitioner is unable to give out the exact figure of the amount incurred by the father of the petitioner in connection with this litigation. Hence, I consider it to be appropriate and in the interest of justice to direct the respondent No.1 to pay Rs.1,000/to the petitioner's father by way of costs of this petition. It is further directed that the result of the petitioner of First Year examination in five years' course of Fine Arts, be declared forthwith.

4. In the result, this Special Civil Application succeeds and the same is allowed. Rule made absolute accordingly.

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(sunil)